IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO. 129 /2004

PETITIONER : Jitendra Giri Goswami, Son of Shri Kalyan Giri Goswami, aged about 30 years, resident of village : Khedigaon, Sarpach : Khedigaon, Block : Pithoura, Tahsil & District : Mahasamund (C.G).

V E R S U S

RESPONDENTS :

1. State of Chhattisgarh through the Secretary, Panchayat & Social Welfare Department, D.K.S. Bhawan, Raipur.

2. The Collector, Mahasamund, Dis-tt : Mahasamund (CG).

3. The Sub Divisional Officer, (Prescribed Authority) Mahasamund, Distt : Mahasamund - C.G.

4. The Additional Tahsildar (Presiding Officer), Pithoura, Tahsil & Distt : Mahasamund (C.G).

5. Mohanlal, Son of Baisakhu, aged about 35 years, resident of village : Chowkbeda, Distt : Mahasamund (C.G).

6. Siyaram, Son of Chintaram aged about 50 years, resident of village : Khedigaon, Tahsil & Distt: Mahasamund (C.G).

7. Labhchand, Son of unknown, aged about 40 years, resident of vill : Chowkbeda, Distt : Mahasamund (C.G).

8. Pardeshi, Son of unknown aged about 38 years, resident of village : Khedigaon, Tahsil & Distt Mahasamund (C.G).

9. Pandurang, Son of Dev-Singh, aged about 30 years resident of vill : Khedi-

P.R No. 119/04
Presented by Shri D.K. Vishwakarma Adv.
dated 12.1.04

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12.1.04
Clerk to A.G. Bilaspur

शपथ आयुक्त
एम.के शुक्ला
बिलासपुर (छ.ग.)
12/01/04
पिथौरा तहसील कोर्ट

gaon, Tahsil & Distt : Mahasamund (C.G).

10. Baliram, Son of unknown, aged about 70 years, resident of vill : Chowkbeda, Distt : Mahasamund (C.G).

11. Ram Singh, Son of Kashi ram, aged about 35 years, resident of village : Khedigaon, Tahsil & Distt : Mahasamund (C.G).

12. Smt. Ratnibai, Wife of Minram, aged about 40 years, resident of village : Khedigaon, Tahsil & Distt Mahasamund (C.G).

13. Smt. Hatobai, Wife of Anjordas, aged about 30 years, resident of vill : Khedigaon, Tahsil & Distt : Mahasamund (C.G).

14. Smt. Pilibai, Wife of Pilsingh, aged about 38 years, resident of village : Khedigaon, Tahsil & Distt : Mahasamund (C.G).

15. Amrikabai, Wife of Makhiyar, aged about 38 years, resident of village : Khedigaon, Tahsil & District : Mahasamund (C.G).

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA

DETAILS OF THE PETITION

1. Particulars of the Petitioner :

As mentioned above in the cause title.

2. Particulars of the Respondents :

As mentioned above in the cause title.

(36)

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

Writ Petition No.129 of 2004

Jitendra Giri Goswami

Versus

State of Chhattisgarh and others

POST FOR ORDER ON 27th JANUARY, 2004

Sd/-
L.C. Bhadoo
Judge

(31)

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

Writ Petition No.129 of 2004

Jitendra Giri Goswami

Versus

State of Chhattisgarh and others

Present: -

Mr. V.K. Pandey, Advocate: For the petitioner

Mr. Akhil Agrawal, Panel Lawyer: For the State/respondents 1 to 4

Before: Hon'ble Shri Justice L.C. Bhadoo

O R D E R

(Passed on 27th January, 2004)

1. Heard both the counsel on admission.

2. By this writ petition under Article 226/227 of the Constitution of India, the petitioner has questioned the legality and propriety of the order dated 29.12.2003 passed by the Collector, Mahasamund, in Revenue Case No.26-A/89 Year 2002-2003, whereby the learned District Collector rejected the dispute of the petitioner preferred by him under Section 21 (4) of the Chhattisgarh Panchayat Raj Adhiniyam (for short 'the Adhiniyam').

3. Brief facts leading to filing of this writ petition are that the petitioner was elected as Sarpanch of Village Panchayat Khedigaon during the Panchayat elections. Few of the members of the Panchayat i.e. respondents 5 to 15 submitted notice before the prescribed authority i.e. Sub Divisional Officer, Mahasamund, in a prescribed form for bringing no confidence motion against the petitioner. On receiving the notice, the prescribed authority after satisfying himself about the

(32)

admissibility of the notice with reference to Sections 21 (3), 28 (3) & 35 (3) of the Adhiniyam, issued notice (Annexure P-2) to the members of the Panchayat on 07.08.2003 fixing the date for meeting of the Gram Panchayat for discussion on the no confidence motion as 25.08.2003 at 12 Noon in the Gram Panchayat Bhawan, Khedigaon, and K.R. Bhagat, Additional Tehsildar, Pithoura, was appointed to preside over the no confidence motion meeting and all the members were accordingly, informed. The meeting of the Panchayat took place on the given date, time and place and the no confidence motion was carried out.

4. It has further been mentioned in this petition that as per sub-rule (3) of Rule 3 of the Panchayat (Gram Panchayat Ke Sarpanch Tatha Up-Sarpanch, Janpad Panchayat Tatha Zila Panchayat Ke President Tatha Vice President Ke Viruddh Avishwas Prastav) Niyam, 1994, (for short 'the Rules') the prescribed authority cannot fix the meeting for discussion on no confidence motion beyond fifteen days from the date of receipt of the notice. But the prescribed authority had not considered this aspect, which is a mandatory provision and held the meeting of no confidence motion against the petitioner. As the said motion was carried out against the mandatory provisions of the Rules, therefore, the petitioner raised the dispute challenging the validity of the no confidence motion before the Collector under sub-section (4) of Section 21 of the Adhiniyam. However, the learned Collector dismissed the dispute of the petitioner.

5. The main grievance of the petitioner is that as per sub-rule (3) of Rule 3 of the Rules, the prescribed authority was not authorized to fix the date beyond fifteen days from the date of receipt of the said notice. Learned counsel for the petitioner argued that as notices were issued on 07.08.2003 and the date for no confidence motion was fixed on 25.08.2003, therefore, it was beyond fifteen days, as such, the

(33)

mandatory provisions had not been complied with and only on account of that the no confidence motion deserves to be invalidated and declared illegal. Learned counsel for the petitioner relied upon the decision of the Single Bench of M.P. High Court in the matter of **Vijay Jamre vs. State of M.P. and others** reported in **2002 (1) Vidhi Bhasvar 310.**

6. On the other hand, learned counsel for the State/respondents 1 to 4 argued that since the petitioner has not been able to establish that on account of fixing of the date beyond fifteen days, a serious prejudice has been caused to the petitioner, therefore, the petitioner is not entitled for the relief claimed for. In support of his argument, learned counsel for the State relied upon the decision of the Full Bench of M.P. High Court in the case of **Smt. Bhulin Dewangan vs. State of M.P. and others** reported in **2000 (4) M.P.H.T. 69 (FB).**

7. It is true that sub-rule (3) of Rule 3 of the Rules mandates that the prescribed authority shall satisfy himself about the admissibility of notice and shall fix the date, time and place for the meeting within 15 days from the date of receipt of notice, as laid down in the first part of sub-rule (3) of Rule 3 of the Rules, notice is to be dispatched of such meeting to every member of the Panchayat seven days before the meeting.

8. In the present case, the notices were dispatched on 07.08.2003 fixing the meeting on 25.08.2003. Therefore, admittedly, the meeting was fixed beyond a period of 15 days from the date of receipt of the notice, which was contrary to the first part of sub-rule (3) of Rule 3 of the Rules. Now, it is to be seen whether non-compliance of the mandatory provisions, ipso facto, invalidates the proceedings of the no confidence. In this connection, in the case of **Smt. Bhulin Dewangan (*supra*),** the Full Bench of the M.P. High Court held that

(34)

> "The general rule is that non-compliance of mandatory requirement results in nullification of the Act. There are, however, several exceptions to the same. If certain requirements or conditions are provided by statue in the interest of a particular person, the requirements or conditions, although mandatory, may be waived by him if no public interest are involved and in such a case the act done will be valid even if the requirements or conditions have not been performed."

In this case the view taken by the M.P. High Court in the case of **Dhumadhandin vs. State of M.P.** reported in **1997 (1) Vidhi Bhasvar 49** which was followed in the case of **Mahavir Saket vs. Collector, Rewa** reported in **1998 (1) J.L.J. 113** for holding that mere non-compliance of first part of the rule in fixing a meeting beyond the prescribed days of the motion of no-confidence would not invalidate the whole proceedings has been approved.

The Full Bench has further observed that

> "Sub-section (4) of Section 21 permits reference of a dispute to the Collector by Sarpanch or Up-Sarpanch against whom a notice of no confidence motion had been passed. The proceedings of the no-confidence motion or other proceedings under the Act are also assailable in this Court as Constitutional Court under Article 227 of the Constitution of India. Yet in every case of challenge to the proceeding of no-confidence motion either before the Collector or this Court, it would still be open to the Collector or this Court to find out whether in a given case non-compliance of any part of the rule has in fact resulted in any failure of justice or has caused any serious prejudice to any of the parties. The general rule is that a mandatory provision of law requires strict compliance and the directory one only substantial. But even where the provision is mandatory, every non-compliance of the same need not necessarily result in nullification of the whole action. In a given situation even for non-fulfillment of mandatory requirement, the authority empowered to take a decision may refuse to nullify the action on the ground that no substantial prejudice had been caused to the party affected or to any other party which would have any other substantial interest in the proceeding. This Court under Article 227

of the Constitution has also a discretion not to interfere even though a mandatory requirement of law has not been strictly complied with as thereby no serious prejudice or failure of justice has been caused."

9. I have perused the petition of the petitioner. It has no where been mentioned in the petition that on account of non-compliance of the mandatory provisions of first part of sub-rule (3) of Rule 3 of the Rules, any serious prejudice has been caused to the petitioner. In the judgment cited by the counsel for the petitioner, the above aspect of the law which has been laid down by the Full Bench of the M.P. High Court has not been considered. Therefore, in view of the above, even though, the mandatory requirement of sub-rule (3) of Rule 3 of the Rules has not been complied with, but since the petitioner has not been able to plead and establish that on account of non-fulfillment of the mandatory requirement a serious prejudice has been caused to him and there is failure of justice, this Court is not inclined to exercise the discretionary power in favour of the petitioner to invalidate or nullify that no confidence motion passed by the Panchayat against the petitioner in view of the law laid down by the Full Bench of M.P. High Court in the case of **Smt. Bhulin Dewangan** (*supra*).

10. In the circumstances, the petition is liable to be dismissed at the admission stage itself and the same is accordingly dismissed.

Sd/-
L.C. Bhadoo
Judge

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